

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service;)	CC Docket No. 96-45
Interim Hold-Harmless Provision of the)	FCC 99J-2
Commission's High-Cost Support)	
Mechanism)	

COMMENTS

The National Exchange Carrier Association, Inc. (NECA) submits these comments in response to the Federal-State Joint Board on Universal Service (Joint Board) *Public Notice*, released November 3, 1999.¹

I. Introduction

On November 2, 1999, the Federal Communications Commission (FCC or Commission) released two orders that reform universal service support for non-rural local exchange carriers (LECs). The *Inputs Order* adopted the input values of the new forward-looking economic cost mechanism.² The *Methodology Order*³ adopted rules for

¹ See Federal-State Joint Board on Universal Service Seeks Comment on the Interim Hold-harmless Provision of the Commission's High-cost Support Mechanism, CC Docket No. 96-45, Public Notice, FCC 99J-2 (rel. Nov. 3, 1999)(*Public Notice*).

² Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-16, *Tenth Report and Order*, FCC 99-304 (rel. Nov. 2, 1999)(*Inputs Order*).

³ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Ninth Report & Order and Eighteenth Order on Reconsideration*, FCC 99-306 (rel. Nov. 2, 1999) (*Methodology Order*).

implementing the new mechanism, including a "hold-harmless" provision to ensure that LECs receive no less support under the new methodology than they had been receiving under the current methodology.⁴ The new mechanism will become effective January 1, 2000 for non-rural carriers.⁵

The *Public Notice* seeks comment on procedures for phasing out or eliminating the interim hold-harmless provision of the Commission's new forward-looking high-cost support mechanism for non-rural carriers. In addition to support associated with unseparated loop and port costs, interim hold-harmless amounts will also apparently include Long Term Support (LTS) payments currently available under section 54.303 of the Commission's rules.⁶

NECA does not agree that LTS should be included in the computation of hold-harmless support calculations, and accordingly plans to seek clarification or reconsideration of this portion of the Commission's *Methodology Order*. To the extent that LTS amounts are included in hold-harmless support calculations, however, the Universal Service Joint Board and the Commission must assure that these amounts are

⁴ To the extent a carrier does not qualify for forward-looking support under the new mechanism, or qualifies for less forward-looking support than it would receive under the existing mechanism, the carrier will receive interim hold-harmless support based on the existing mechanism. See *Methodology Order* at ¶ 78.

⁵ The current support mechanism for rural carriers will not change until at least January 1, 2001, pending a decision from the Commission, the Joint Board, and the Rural Task Force on an appropriate high-cost methodology for these carriers. See *Methodology Order*, at n. 213.

⁶ *Id* at ¶ 78.

not subject to phase-out at the end of the interim period, but should instead be continued for all NECA pool participants, both rural and non-rural.

II. LTS Amounts Included in Hold-Harmless Support Should Not Be Included in Intrastate Rate Calculations.

The Commission has stated that interim hold-harmless support will include LTS under section 54.303 of its rules for non-rural carriers that would otherwise be eligible for LTS, if support were continued under the existing mechanism.⁷ The *Methodology Order* further states that federal universal service support (apparently including LTS) provided in the form of carrier revenue, is to be accounted for by states in their rate-making processes, effectively treating this support as intrastate revenue.⁸

In this regard, the *Methodology Order* appears to assume that LTS is provided as part of the *intrastate* support amounts calculated by the new forward-looking cost mechanism for non-rural carriers. Based on this assumption, the *Methodology Order* appears to contemplate that any LTS payments included in hold-harmless amounts should be phased out in the same manner that other hold-harmless support flows are eliminated.

In fact, LTS is an *interstate* support mechanism, not included in, or replaced by, the new forward-looking economic cost mechanism implemented in this proceeding. LTS is intended to assure reasonable comparability of *interstate* carrier common line

⁷ *Id.* at ¶ 78.

⁸ *Id.* at ¶ 95. Similarly, the *Methodology Order* states that all support amounts provided to non-rural carriers via the hold-harmless provision (again, apparently including LTS) "should continue to operate through the jurisdictional separations process to reduce book costs to be recovered in the intrastate jurisdiction." *Id.* at ¶ 106.

(CCL) rates between NECA pool participants and non-NECA pool members. The mechanism was put in place in 1989, as part of the Commission's *NTS Recovery* proceeding.⁹ In that proceeding, the Joint Board and the Commission determined that NECA common line (CL) pool participants should be permitted to continue to charge an interstate CCL rate that is set at the nationwide average of CCL rates. Since NECA pool participants common line revenue requirements tend to be higher than the nationwide average, a shortfall in interstate revenue requirements is generated. LTS represented the difference between the actual interstate CCL revenue requirements of NECA pool participants, and the amount of CCL revenues generated when pool participants charge the nationwide average.

LTS is an important source of revenue for all NECA pool participants. LTS constitutes approximately 34% of NECA's common line pool revenue stream. Only a few non-rural carriers participate in the NECA common line pool, including North State Telephone, receiving \$2.4 million in LTS; Puerto Rico Telephone Company, receiving \$89.7 million; and Roseville Telephone Company, receiving \$4.7 million.¹⁰ Loss of

⁹ MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, *Report and Order*, 2 FCC Rcd 2953 (1987) (*NTS Recovery Order*) ("[LTS] is necessary to ensure that [small] companies are not required to charge inordinately high CCL rates for access to their networks. The long-term support mechanism allows these carriers to maintain the nationwide averaged CCL rate that would have existed had the mandatory full common line pool been retained. This should avoid unnecessary pressures for bypass in high cost areas, preserve toll averaging, and encourage competitive providers of interstate switched services to enter such markets.") *Id.* at 2957-58.

¹⁰ As included in the Universal Service Administrative Company (USAC) quarterly filing of year 2000 first quarter universal service High Cost Fund support amounts, Appendix 1, published at the FCC Internet web site: http://www.fcc.gov/ccb/universal_service/quarterly_filings/.

LTS revenues associated with these carriers would substantially impact CCL rates for all NECA pool members, causing rates to increase by as much as 42%.

This result appears inconsistent with the Commission's intent in creating a new universal service support mechanism. In its *Methodology Order*, for example, the Commission makes clear that it is addressing support to enable the reasonable comparability of *intrastate* rates. According to the Commission, it would be inappropriate to address costs via this mechanism that are recovered through interstate rates because such costs, or their recovery, do not directly affect intrastate rates.¹¹ Since LTS is an *interstate* revenue flow designed to offset interstate CCL revenue requirements for NECA pool members, non-rural carriers should continue to receive LTS notwithstanding any phase-out of other hold-harmless amounts. LTS is a post-separations supplement to interstate access charge revenues, and is not used to offset *intrastate* revenue requirements.

For these reasons, LTS should not be included as part of the interim hold harmless mechanism, but instead should continue to be provided to NECA pool participants (both rural and non-rural) using current calculation methods.¹² As noted above, NECA intends to seek clarification or reconsideration of this portion of the *Methodology Order*. Should the Joint Board issue a recommendation in this proceeding prior to the time that the

¹¹ *Methodology Order*, FCC 99-306, ¶¶ 62-63 (emphasis added).

¹² NECA has previously informed the Commission of the need to defer planned changes in the way that LTS amounts are calculated to assure consistency of results following implementation of new universal service mechanisms for non-rural carriers on January 1, 2000 (i.e., continue to use the annual percent change in NACPL to determine the following year's LTS amount). See NECA Reply in Federal-State Joint Board on (continued on next page)

Commission acts on NECA's petition, however, it should recommend that the Commission not include LTS in the computation of interim "hold harmless" support amounts, but continue it for all recipients consistent with current rules.

III. LTS Amounts Included in "Hold-Harmless" Support Amounts Should Not be Subject to Phase-Out.

As described above, LTS is an interstate access support mechanism, intended to permit carriers that participate in the NECA pools to charge interstate carrier common line rates set close to the national average of carrier common line rates. As such, it should not be included in the interim "hold harmless" mechanism under consideration in this proceeding.

In the event that the Commission finds that LTS should nevertheless be included in "hold harmless" support calculations, it should not require reduction or elimination of these support flows after the interim phase-out period. Although, as noted above, only a few non-rural carriers currently participate in the NECA carrier common line pool, the LTS associated with these carriers represents a vital mechanism for assuring reasonable comparability of interstate access rates. Limiting or phasing-out LTS amounts associated with these non-rural pool participants would significantly increase the disparity between NECA pool CCL rates and CCL rates charged by non-NECA pool participants, a result that would be inconsistent with the Commission's intent in creating a new universal service support mechanism. Since LTS is an *interstate* CCL revenue stream for NECA

Universal Service; Access Charge Reform, CC Docket Nos. 96-45 and 96-262, National Exchange Carrier Association, *Reply* (Aug. 6, 1999) at n. 7.

pool members, non-rural carriers should continue to receive LTS notwithstanding any phase-out of other hold-harmless amounts.

IV. Conclusion

LTS amounts should not be included in the computation of "hold harmless" support calculations, but should be maintained for all pool members based on current rules. Contrary to the apparent intent of the Commission's *Methodology Order*, LTS is a component of *interstate* access rates, and should not be treated as a component of intrastate rates. To the extent that LTS amounts are included in "hold harmless" support calculations, however, the Joint Board and the Commission must assure that these amounts are not subject to phase-out at the end of the interim period, but should instead be continued for all NECA pool participants, both rural and non-rural.

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CERTIFICATE OF SERVICE

I hereby certify that copy of the Comments was served this 1st day of December 1999, by electronic delivery or first class mail, to the persons listed below.

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